

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

CAREN BRITT,

Plaintiff

v.

S. RAY DERUSSE, and THE  
PRUDENTIAL INSURANCE COMPANY  
OF AMERICA,

Defendants

CIVIL ACTION NO. 05-30197

**DEFENDANT, THE PRUDENTIAL INSURANCE COMPANY  
OF AMERICA'S PARTIALLY ASSENTED-TO MOTION TO DISMISS WITH  
PREJUDICE AND INCORPORATED MEMORANDUM OF LAW IN SUPPORT  
THEREOF**

Pursuant to Local Rule 7.1, now comes the defendant, The Prudential Insurance Company of America ("Prudential"), and hereby moves this Court to enter an order dismissing Prudential from this action with prejudice.<sup>1</sup> The Plaintiff, Caren Britt, has assented to this Motion.

As grounds for this Motion, Prudential states as follows: Pursuant to Prudential's Motion for Leave to Pay the Proceeds into Court, this Court ordered that the disputed proceeds the veteran's life insurance policy be paid into Court on September 30, 2005. Prudential paid the proceeds into the Court's interest-bearing account and the money was deposited by the Court on or about October 7, 2005. In order to facilitate dismissal of Prudential, counsel for Prudential requested that the parties sign a stipulation of dismissal with prejudice, however, only the Plaintiff would agree to sign such a Stipulation. Counsel for co-defendant, S. Ray DeRusse, would not execute such a stipulation and thus, this motion ensued.

Since Prudential is a disinterested stakeholder and since no claims or cross-claims against Prudential remain due to Prudential's payment of the proceeds into Court, Prudential respectfully requests that it be dismissed from the within action with prejudice. Prudential refers this Court to Prudential's Motion for Leave to Pay the Proceeds into Court and the Memorandum of Law in Support of the Motion for a full discussion of Prudential's role and involvement in this litigation. In said Motion, Prudential specifically requested in its Memorandum that the Court issue an Order: extinguishing with finality all claims that the Plaintiff has against Prudential upon Prudential's payment of the Proceeds into Court; restraining the Plaintiff and Co-Defendant, DeRusse, from instituting or prosecuting, in any other state or federal court, any proceeding against Prudential with respect to the Proceeds; and that upon Prudential's deposit of the Proceeds with the Court, Prudential will be discharged from any liability in this action. Prudential's Motion for Leave was unopposed by all parties.

Prudential has fulfilled all of its obligations with regard to the policy at issue in this litigation and has paid all of the disputed proceeds plus interest from said policy into an interest-bearing account with Court. Thus, Prudential is entitled to a dismissal with prejudice. Co-Defendant did not oppose Prudential's Motion for leave which requested that Prudential's liability be discharged after payment of the proceeds and any argument from co-defendant opposing Prudential's dismissal at this juncture should be considered untimely and insufficient to prevent Prudential's dismissal with prejudice.

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( . . . continued)

<sup>1</sup> Counsel for Prudential certifies that all parties have conferred on this issue of the dismissal of Prudential with prejudice pursuant to Rule 7.1(a)(2).

WHEREFORE, Prudential asks that the Court grant this motion and issue an order dismissing it from the instant litigation with prejudice and awarding it the costs and fees associated with the filing of the within motion.

**Respectfully submitted,**

THE PRUDENTIAL INSURANCE  
COMPANY OF AMERICA,

By Its Attorneys,

/s/ Carey L. Bertrand  
William T. Bogaert, BBO # 546321  
Carey L. Bertrand, BBO# 650496  
Wilson, Elser, Moskowitz,  
Edelman & Dicker, LLP  
155 Federal Street  
Boston, MA 02110  
(617) 422-5300

Dated: October 17, 2005

Assented to:

The Plaintiff,  
Caren Britt,  
By her Attorney,

/s/ Mark Tanner  
Mark Tanner, BBO#649532  
Bacon & Wilson, P.C.  
31 Trumbull Rd.  
Northampton, MA 01060

CERTIFICATE OF SERVICE

I, Carey L. Bertrand, do hereby certify that I have served a true copy of the foregoing document on counsel of record by first class mail, postage prepaid on this 17th day of October 2005.

/s/ Carey L. Bertrand  
Carey Bertrand